

**TRAFFIC TERMINATION AND BILLING AGREEMENT  
BETWEEN KMC TELECOM V, INC. AND WITTENBERG TELEPHONE COMPANY**

This Traffic Termination And Billing Agreement ("Agreement") is effective as of January 1, 2004, by and between WITTENBERG TELEPHONE COMPANY ("WITTENBERG"), a Wisconsin corporation with principal offices located at 104 W. Walker St., Wittenberg, WI 54499, and, KMC Telecom V, Inc. ("KMC"), a Delaware corporation with principal offices located at 1755 North Brown Road, Lawrenceville, GA 30043. WITTENBERG and KMC shall be collectively referred to as the "Parties" or individually as a "Party."

**WITNESSETH:**

**WHEREAS**, WITTENBERG is an incumbent local exchange carrier with authority from the Commission to provide local exchange services to the Elderon exchange (715-454);

**WHEREAS**, KMC has obtained authority from the Commission to provide competing local exchange service within the Wausau exchange (715-393) and that exchange area currently has Extended Area Service ("EAS") with the Elderon exchange; and

**WHEREAS**, this Agreement sets forth the terms, conditions and charges for the exchange of EAS Traffic between the facilities operated by the Parties.

**NOW, THEREFORE**, in consideration of the mutual obligations as set forth below and other valuable consideration, the Parties hereby agree as follows:

**1. DEFINITIONS**

- 1.1. **Commission** shall mean the Public Service Commission of Wisconsin.
- 1.2. **EAS Traffic** shall mean wireline-to-wireline calls which: (a) originate in the Wausau exchange (715-393) and terminate in the Elderon exchange (715-454); or (b) originate in the Elderon exchange (715-454) and terminate in the Wausau exchange (715-393).
- 1.3. **FCC** shall mean the Federal Communications Commission.
- 1.4. **Internet-Bound Traffic** shall mean any EAS Traffic that originates on one Party's network and is delivered by the other Party to an Internet Service Provider in order to enable the originating Party's subscriber to communicate with destinations on the Internet.
- 1.5. **Local Exchange Carrier** or **LEC** shall mean any person that is engaged in the provision of telephone exchange service or exchange access.

## **2. SCOPE**

This Agreement governs the exchange of EAS Traffic between KMC and WITTENBERG.

## **3. INTERCONNECTION**

This section sets forth the rights and obligations of the Parties to establish direct interconnection to enable the exchange of EAS Traffic between the networks of both Parties.

- 3.1. The Parties agree to interconnect their networks for the exchange of EAS Traffic using dedicated two-way trunks. Non-EAS Traffic should not be routed on these two-way interconnection trunks.
- 3.2. The Parties agree that initially KMC will connect 24 trunks using one DS1 connection at the Wittenberg central office (CLLI: WTNBWIXADS1) to receive EAS Traffic from WITTENBERG customers and to deliver EAS Traffic from KMC customers. These trunks shall be ordered, and paid for, by KMC from the appropriate WITTENBERG tariff and any applicable third-party tariffs and/or agreements.
- 3.3. KMC shall be responsible for determining and ordering additional two-way trunks in DS1 increments that are required to meet a (P.01) design blocking objective for all traffic carried on each two-way interconnection trunk group. Such additional DS1 facilities shall be ordered, and paid for, by KMC from the appropriate WITTENBERG tariff and any third-party tariffs and/or agreements.
- 3.4. WITTENBERG may monitor the two-way interconnection trunk groups using service results for the applicable design-blocking objective. If WITTENBERG observes blocking in excess of the applicable design-blocking objective on any two-way interconnection trunk group and KMC has not notified WITTENBERG that it has corrected such blocking, WITTENBERG may submit to KMC a trunk group service request directing KMC to remedy the blocking. Upon receipt of the trunk group service request, KMC shall within five (5) business days, or as otherwise mutually agreed by the Parties, submit an order to WITTENBERG and any applicable third parties to augment the two-way interconnection trunk groups with excessive blocking.
- 3.5. The two way interconnection trunk groups shall be configured to the maximum extent possible to be carried on already-existing physical interconnection arrangements, such as fiber optic facilities. A requirement to construct new physical transport facilities (or to pay for the construction of such facilities) shall constitute a sufficient reason to decline to establish a separate trunk group. Cooperative arrangements for efficient network engineering established under this Section 3 shall not affect the Parties' cost responsibilities as provided for in this Agreement.

- 3.6. Each Party shall route and rate EAS Traffic from its network to the other Party's network based on the NPA-NXX code of the dialed telephone number, in accordance with the Local Exchange Routing Guide (LERG). Each Party shall be responsible for updating the LERG to reflect the NPA-NXX codes assigned to that Party. Each Party shall be responsible for updating the routing instructions in its own switches to reflect the NPA-NXX assignments of the other Party as reflected in the LERG.

#### **4. COMPENSATION ARRANGEMENT**

- 4.1. The Parties agree to terminate EAS Traffic (including Internet-Bound Traffic) on a bill and keep basis of compensation. Bill and keep shall mean that the originating Party has no obligation to pay termination charges to the terminating Party, regardless of any charges the originating Party may assess its end users, meaning no compensation shall be due to either Party for termination of such traffic.
- 4.2. In the event that non-EAS Traffic is improperly routed and exchanged between the Parties over the direct interconnection described in Section 3 above, all such non-EAS Traffic shall be subject to the appropriate state or interstate access charges.
- 4.3. For all WITTENBERG DS1 facilities ordered by KMC pursuant to Section 3 of this Agreement, WITTENBERG shall bill and KMC shall pay a non-recurring charge for each DS1 installation and a monthly recurring charge for each DS1. Said charges shall be determined based on the appropriate WITTENBERG tariff.
- 4.4. For all third party DS1 facilities ordered by KMC as required by Section 3 of this Agreement, KMC shall pay any and all charges assessed by third parties for such facilities, including, but not limited to, installation and monthly recurring charges.

#### **5. BILLING AND PAYMENT**

- 5.1. All bills shall be due thirty (30) days after the bill date (the "Due Date").
- 5.2. Taxes. WITTENBERG will bill and collect from KMC, and KMC agrees to pay to WITTENBERG all appropriate federal, state, and local sales, use or other taxes attributable to KMC's purchase or lease of WITTENBERG's facilities pursuant to the terms of this Agreement, except to the extent that KMC notifies WITTENBERG and provides WITTENBERG appropriate documentation to WITTENBERG's reasonable satisfaction that KMC qualifies for a full or partial exemption from such taxes.
- 5.3. Delays in billing shall not relieve the billed Party from responsibility for payment if the bill is rendered within twenty-four (24) months of the month in which the service being billed for is rendered.

- 5.4. If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. The billed Party shall pay all undisputed amounts by the Due Date. Billing disputes shall be subject to the terms of Section 19, Dispute Resolution.
- 5.5. Charges due to the billing Party that are not the subject of a good faith billing dispute under Section 5.4, and that are not paid by the Due Date, shall be subject to a late payment charge. The late payment charge shall be in an amount specified by the billing Party which shall not exceed one-and-one-half percent (1.5%) per month, compounded monthly, of the overdue amount (including any unpaid previously billed late payment charges) but not more than the maximum non-usurious rate of interest permitted under applicable law.

## **6. GOVERNING LAW**

This Agreement shall be governed by, construed under, interpreted and enforced in accordance with the laws of the State of Wisconsin and, where applicable, federal law.

## **7. REPRESENTATIONS AND WARRANTIES OF WITTENBERG**

WITTENBERG represents and warrants to KMC the following:

- 7.1. WITTENBERG is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and is authorized to transact business in the State of Wisconsin.
- 7.2. WITTENBERG, and the undersigned signatories executing this Agreement on behalf of WITTENBERG, are duly authorized and empowered to enter into this Agreement with KMC;
- 7.3. To the best of the undersigned's actual knowledge, neither the entering into of this Agreement nor the performance or satisfaction by WITTENBERG of its obligations and liabilities hereunder nor the exercise by WITTENBERG of any of its rights or options hereunder, will constitute or result in a violation or breach by WITTENBERG of any judgment, order, writ, injunction or decree issued against or imposed upon it, or to the best of the undersigned's actual knowledge will result in a violation of any applicable Law.

## **8. REPRESENTATIONS AND WARRANTIES OF KMC**

KMC represents and warrants to CARRIER the following:

- 8.1. KMC is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and is authorized to transact business and holds

a certain Certificate of Public Convenience and Necessity in the State of Wisconsin;

- 8.2. KMC and the undersigned signatories executing this Agreement on behalf of KMC are duly authorized and empowered to enter into this Agreement with WITTENBERG;
- 8.3. To the best of the undersigned's actual knowledge, neither the entering into of this Agreement nor the performance or satisfaction by KMC of its obligations and liabilities hereunder nor the exercise by KMC of any of its rights or options hereunder will constitute or result in a violation or breach by KMC of any judgment, order, writ, injunction or decree issued against or imposed upon it, or to the best of the undersigned's actual knowledge will result in a violation of any applicable Law.

## **9. DISCLAIMER OF REPRESENTATION AND WARRANTY**

- 9.1. **EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES OR FACILITIES IT PROVIDES OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE.**

## **10. LIMITATIONS OF LIABILITY.**

The Parties agree that the following limitations of liability shall apply:

- 10.1. Neither Party will be liable to the other for either Party's indirect, incidental, special or consequential damages (including, but not limited to, lost profits) arising, in whole or in part, from either Party's actions, omissions, mistakes, or negligence relating to performance under this Agreement (including, but not limited to, breaches of this Agreement). Nothing in this Agreement shall limit a Party's liability for willful misconduct, nor shall anything in this Agreement be construed to limit a Party's right to recover for the other Party's violations of any applicable statutes.
- 10.2. Neither Party shall be liable for any act or omission of another telecommunications company providing a portion of the services provided under this Agreement.

## **11. INDEMNIFICATION**

- 11.1. General. Each Party shall indemnify, defend and hold harmless the other Party, the other Party's officers, directors, employees, shareholders and agents (each an "Indemnified Person") against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments (each a "Loss," and, collectively, "Losses") to

which an Indemnified Person may become subject, if such Loss is caused by the other Party's (the "Indemnifying Party's") officers', directors', employees', shareholders' or agents' (i) negligence or willful misconduct, related to or arising out of this Agreement, (ii) breach of, or misrepresentation of any representation and warranty contained in this Agreement, or (iii) the supply of inaccurate data in conjunction with the provision of any service provided pursuant to this Agreement.

11.2. Notice. Upon obtaining knowledge thereof, an Indemnified Person shall promptly give the Indemnifying Party written notice of any Losses that the Indemnified Person has determined have given or could give rise to a claim for indemnification hereunder (a "Notice of Claim"). A Notice of Claim shall specify in reasonable detail the nature and all known particulars related to the Loss for which indemnification is sought under this Section 11. But failure to give a Notice of Claim shall not release the Indemnifying Party from indemnifying the Indemnified Person, unless the Indemnifying Party is actually prejudiced thereby.

11.3. Procedure for Third Party Claims. The Indemnifying Party will assume the defense of any Loss which is a claim by a third party against the Indemnified Person. The Indemnified Person shall have the right, but not the obligation, to participate, at its own cost and expense, in the defense or other opposition of any Loss through legal counsel selected by it and shall have the right, but not the obligation, to assert any and all cross-claims or counterclaims which it may have. The Indemnified Person shall, at the Indemnifying Party's expense, (i) at all times cooperate in all reasonable ways with, make its relevant files and records available for inspection and copying by, make its employees reasonably available to and otherwise render reasonable assistance to the Indemnifying Party upon request, and (ii) not compromise or settle such Loss without the prior written consent of the Indemnifying Party. If the Indemnifying Party proposes to settle or compromise any Loss, the Indemnifying Party shall give written notice to that effect (together with a statement in reasonable detail of the terms and conditions of such settlement or compromise) to the Indemnified Person within a reasonable time prior to effecting such settlement or compromise. Notwithstanding anything contained herein to the contrary, the Indemnified Person shall have the right to object to the settlement or compromise of any such Loss whereupon (i) the Indemnified Person will assume the defense or other opposition of any such Loss and (ii) the Indemnifying Party shall be released from any and all liability with respect to any such Loss to the extent that such liability exceeds the liability which the Indemnifying Party would have had in respect of such a settlement or compromise.

11.4. The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

## **12. ASSIGNMENT**

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Neither Party may assign or transfer or sublease this Agreement or any rights or obligations hereunder to another entity without

the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that this Agreement may be assigned or transferred without the other Party's consent to any subsidiary, parent or affiliated company of the Party, or pursuant to any reorganization, merger, or restructuring of its business, or pursuant to any sale or transfer of all or substantially all of its assets.

### **13. FORCE MAJEURE**

Except as otherwise expressly provided in this Agreement, and except with respect to any failure to pay any sum due hereunder as a result of bankruptcy, insolvency or refusal or inability to pay, if either Party shall be delayed or hindered in whole or in part, or prevented from, the performance of any non-monetary covenant or obligation hereunder as a result of acts of God, fire or other casualty, earthquake, hurricane, flood, epidemic, landslide, enemy act, terrorist act, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, general unavailability of certain materials, strikes, boycotts, lockouts, labor disputes or work stoppage or such other circumstance beyond the control of either Party hereto ("Force Majeure Event"), then the performance of such covenant or obligation, shall be excused for the period of such delay hindrance or prevention and the period of the performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of such delay, hindrance or prevention. If either Party is unable to perform due to a Force Majeure Event, the other Party shall continue to perform to the extent it is able to do so.

### **14. NO WAIVER**

No release, discharge or waive of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by the other Party as the case may be. Neither the failure of either Party to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof, nor the acceptance of any payments from either Party with knowledge of a breach of this Agreement by the other Party in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies that each Party may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

### **15. CONFIDENTIALITY OF PROPRIETARY DATA**

- 15.1. The Parties agree that it may be necessary for one Party (the "Disclosing Party") to disclose certain confidential information to the other Party (the "Recipient") during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data and similar information (collectively, "Confidential Information"). The Confidential Information shall either be in writing or other tangible forms and clearly marked with a confidential, private or proprietary legend (except for all information reviewed pursuant to Section 7 which shall be protected hereunder, whether or not so marked) or when the Confidential Information is communicated orally, it shall also be communicated that the Information is confidential, private or proprietary, and the fact that

confidential information subject to this Agreement is communicated shall be continued in writing.

- 15.2. The Confidential Information is deemed proprietary to the Disclosing Party and it shall be protected by the Recipient as the Recipient would protect its own proprietary information. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.
- 15.3. Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by Recipient, (iii) after it is rightfully acquired by Recipient free of restrictions by Disclosing Party, or (iv) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that Recipient has provided Disclosing Party with notice of such requirement as soon as possible and prior to disclosure, and provided that Recipient agrees to assist the Disclosing Party, at the Disclosing Party's cost and expense, with all reasonable lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.
- 15.4. Each Party agrees that Disclosing Party would be irreparably injured by a breach of this Agreement by Recipient or its representatives and that Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this Section 15. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.
- 15.5. The Recipient shall return or destroy all Confidential Information received from the Disclosing Party, including any copies made by the Recipient, within thirty (30) days after a written request by the Disclosing Party is delivered to the Recipient, except for (a) Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement, and (b) one copy for archival purposes only.
- 15.6. Notwithstanding the provisions of Sections 15.2 and 15.3, the Recipient may use and disclose Confidential Information received from the Disclosing Party to the extent necessary to enforce the Recipient's rights under this Agreement or applicable law. In making any such disclosure, the Recipient shall make reasonable efforts to preserve the confidentiality and restrict the use of the Confidential Information while it is in the possession of any person to whom it is disclosed, including, but not limited to, by requesting any governmental entity to



whom the Confidential Information is disclosed to treat it as confidential and restrict its use to purposes related to the proceeding pending before it.

- 15.7. Each Party's obligations under this Section 15 shall survive expiration, cancellation or termination of this Agreement for a period of three years after the latest of its expiration, cancellation or termination.

## **16. DEFAULT**

- 16.1. If either Party ("Defaulting Party") materially breaches any material provision of this Agreement, and such failure or breach continues for 30-days after written notice thereof from the other Party, the other Party may, by written notice terminate the Agreement. The Party receiving written notice regarding the breach may correct the breach with the 30-day period, in which case the Agreement shall not terminate.

## **17. TERM AND TERMINATION**

This Agreement shall remain in effect for a period of three (3) years from the effective date. This Agreement shall take effect upon signing by both parties. This Agreement will automatically renew for successive one year periods, unless either Party requests renegotiation or gives notice of termination at least ninety (90) days prior to the expiration of the initial or any renewal term. In the event a Party requests to renegotiate this Agreement and such renegotiation does not conclude prior to expiration of this Agreement or a Party gives notice of termination and the other Party requests a replacement agreement and a replacement agreement is not reached prior to the expiration of this Agreement, this Agreement shall continue in full force and effect until such time as replaced by a superseding agreement or one-hundred eighty (180) days, whichever is earlier. In the event of a termination of this Agreement or of any telecommunications service provided hereunder, the Parties shall work cooperatively to minimize any potential interruptions of service and/or other disruptions or inconveniences to the Parties' customers.

## **18. NOTICES**

### **18.1. Notice Requirements**

Any notice, demand, request, offer, consent, approval or communication to be provided under this Agreement shall be in writing and shall be deemed received: (i) three business days after it is deposited, postage prepaid, in the United States mail, certified or registered mail with a return receipt requested, addressed (as the case may be) to KMC at KMC's address shown herein, or to WITTENBERG at the address of WITTENBERG shown herein or the actual date of receipt which ever is earlier; (ii) the next business day after it is deposited with a nationally recognized and reputable next day delivery air courier addressed (as the case may be) to KMC at KMC's address shown herein, or to WITTENBERG at the address of WITTENBERG shown herein; or (iii) the same day it is personally delivered (as the case may be) to KMC at KMC's address shown herein, or to WITTENBERG at the address of CARRIER shown herein.

18.2. Notice Addressees

If to WITTENBERG:

Wittenberg Telephone Company  
Attention: Al Mahnke, Vice President and General Manager  
104 W. Walker Street  
Post Office Box 160  
Wittenberg, WI 54499  
Telephone Number: 715-253-2111  
Fax Number: 715-253-3497  
Email: amahnke@netnet.net

With a copy to:

Axley Brynson, LLP  
Attention: Judd A. Genda  
2 East Mifflin Street  
Post Office Box 1767  
Madison, WI 53701  
Telephone Number: 608-257-5661  
Fax Number: 608-257-5444  
Email: jgenda@axley.com

If to KMC:

KMC Telecom Holdings, Inc.  
ATTENTION: Douglas Nelson  
1755 North Brown Road  
Lawrenceville, Georgia 30043  
Telephone Number: 678-985-7900  
Fax Number: 678-985-6213  
Email: douglas.nelson@kmctelecom.com

With a copy to:

KMC Telecom Holdings, Inc.  
ATTENTION: Marva Brown Johnson  
1755 North Brown Road  
Lawrenceville, Georgia 30043  
Telephone Number: 678-985-7900  
Fax Number: 678-985-6213  
Email: marva.johnson@kmctelecom.com

### 18.3. Different Address

Either Party may designate a different representative and/or address for receiving notice hereunder by giving thirty (30) days prior written notice to the other Party in accordance with the provisions hereof.

### 18.4. Refusal of Notice

If any notice is tendered and is refused by the intended recipient, such notice, shall, nonetheless, be considered to have been given and shall be effective as of the date provided herein.

## 19. DISPUTE RESOLUTION

19.1. Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten (10) business days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within thirty (30) days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.

19.2. If the Parties have been unable to resolve the dispute within thirty (30) days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the Federal Communications Commission, or a court of competent jurisdiction.

## 20. CHANGE IN LAW

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in applicable law, affects any material provision of this Agreement, including, without limitation, the rating of and/or charges which may be assessed by WITTENBERG for calls originated by a WITTENBERG customer (715-484) and terminated to a KMC customer (715-393) through a virtual NXX type arrangement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to applicable law. If the Parties are unable to agree to a mutually acceptable revisions to the Agreement either Party may pursue the dispute resolution procedures in Section 19.

## **21. RESERVATION OF RIGHTS**

Notwithstanding anything to the contrary in this Agreement, neither Party waives, and each Party hereby expressly reserves, its rights, which include but are not limited to its right: (a) to challenge the lawfulness of this Agreement and any provision of this Agreement; (b) to seek changes in this Agreement (including, but not limited to, changes in the rating of and/or charges which may be assessed by WITTENBERG for calls originated by a WITTENBERG customer (715-454) and terminated by a KMC customer (715-393) through a virtual NXX type arrangement) through changes in any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any other change in law; and (c) to challenge the lawfulness and propriety of, and to seek to change, any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any other change in law, including, but not limited to any rule, regulation, order or decision of the Commission, the FCC, or a court of applicable jurisdiction. Nothing in this Agreement shall be deemed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, any other state or federal regulatory or legislative bodies, courts of applicable jurisdiction, or industry fora. The provisions of this Section shall survive the expiration, cancellation or termination of this Agreement.

## **22. SEVERABILITY**

If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws effective during the term of this Agreement, the remainder of this Agreement shall not be affected. In lieu of each clause or provision of this Agreement, which is illegal, invalid and unenforceable, there shall be added as a part of this Agreement a clause or provision as nearly identical as may be possible and may be legal, valid and enforceable. Notwithstanding the foregoing, in the event any clause or provision of this Agreement is illegal, invalid or unenforceable as aforesaid and the effect of such illegality, invalidity or unenforceability is that either Party no longer has the substantial and material benefit of its bargain under this Agreement, then, in such event, such Party may, in its discretion, request good faith renegotiations with the other Party of such illegal, invalid or unenforceable provision. If the Parties do not reach agreement on such provision within thirty (30) days of the date of such request, either Party may cancel and terminate this Agreement (if allowable by applicable law) upon providing reasonable advance written notice thereof to the other Party.

## **23. ACCORD AND SATISFACTION**

Payment by either Party, or receipt or acceptance by a receiving Party hereto, of any payment due hereunder in an amount less than the amount required to be paid hereunder shall not be deemed an accord and satisfaction, or a waiver by the receiving Party of its right to receive and recover the full amount of such payment due hereunder, notwithstanding any statement to the contrary on any check or payment or on any letter accompanying such check or payment. The receiving Party may accept such check or payment without prejudice to the receiving Party's right to recover the balance of such payment due hereunder or to pursue any other legal or equitable remedy provided in this Agreement.

## 24. PROMOTIONS

Neither Party shall acquire any right under this Agreement to use, and shall not use, the name of the other Party or any marks, fanciful characters or designs of a Party or any of its related affiliates or subsidiary companies.

## 25. NO RELATIONSHIP

The Parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, fiduciary, employment or agency relationship for the purposes of this Agreement, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein or in any other document, nothing in this Agreement or in any documents executed or delivered or to be executed or delivered shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, fiduciary, employment or agent relationship of any kind or nature whatsoever between the Parties.

## 26. THIRD PARTY BENEFICIARIES

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action or other privilege.


## 27. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the Parties not embodied in this Agreement shall be of any force or effect. This Agreement supersedes all prior agreements and understandings relating to the subject matter hereof, and all prior agreements or communications that are the subject matter of this Agreement are and shall be merged into this Agreement and shall have no force or effect. This Agreement shall not be amended, modified or waived except by a written agreement executed by both Parties with the same formalities as this Agreement.

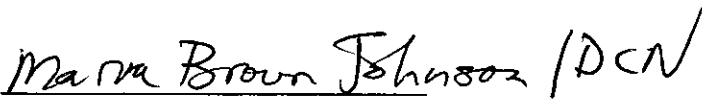
## 28. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**WITTENBERG TELEPHONE COMPANY**

By:   
Printed: Al Mahnke  
Title: Vice President and General Manager  
Date: January 20, 2004

**KMC Telecom V, Inc.**

By:  /DCN  
Printed: Marva Johnson  
Title: Senior Regulatory Counsel  
Date: January 8, 2004